

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2007

CORAM

THE HON'BLE MR. JUSTICE S.J. MUKHOPADHAYA
&
THE HON'BLE MR. JUSTICE V. DHANAPALAN

W.A. No.406 of 2007 & M.P. No.1 of 2007

G. Jothivelu Appellant/Petitioner

vs.

1 The District Collector
Namakkal

2 The District Revenue Officer
Namakkal

3 The Revenue Divisional Officer
Namakkal

4 The Tahsildar
Rasipuram
Namakkal District

Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 16.02.2007 passed by a learned Single Judge of this Court in W.P. No.5600 of 2007. Presented to this Court under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the orders, passed by the third respondent in Proceedings Na.Ka.No. 3719/05/A1 dated 29.12.2006 and quash the same as illegal and consequently direct the third respondent to reinstate the petitioner as Village Administrative officer of Mangalapuram Village.

For appellant Mr. K. Shahul Hameed

For respondents Mr. G. Sankaran, AGP (Writs)

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JUDGMENT

V. DHANAPALAN, J.

The challenge in this writ appeal is to the order dated 16.02.2007 passed by a learned Single Judge of this Court in W.P. No.5600 of 2007 whereby and whereunder, the order of removal from service of the appellant/petitioner passed by the Revenue Divisional Officer, Namakkal, the third respondent herein, has been confirmed.

2. The necessary facts leading to this writ appeal are detailed as under:

a. The appellant/petitioner worked as a Village Administrative Officer in Mangalapuram Village (which is his native village), Rasipuram Taluk, Namakkal District from 15.09.2004 and his father had owned certain extent of lands in that village and had also constructed a temple in those lands which were wrongly classified as Government poramboke lands. Based on a representation from his father, a detailed enquiry had been conducted by the Tahsildar who had recommended issue of patta to his father and cancellation of patta issued favouring the intruders. In pursuance of the settlement made by his father, the District Revenue Officer, the second respondent, ordered issuance of patta in favour of the petitioner based on which the Tahsildar, the fourth respondent had issued patta Nos.14 and 843. Based on these, the appellant/petitioner had also paid land tax and he himself being the Village Administrative Officer, had made entry recording the collection of land tax for his own lands. While so, the appellant/petitioner was suspended from service on 29.04.2005 alleging that he had tampered with the Government records and his representation to the Revenue Divisional Officer to set aside his suspension order bore no fruit.

b. Meanwhile, since his lands were utilised by the Block Development Officer for public purpose, a writ petition in W.P.No.30142 of 2005 came to be filed by the appellant/petitioner in which he got a favourable order of interim injunction and his order of suspension also was revoked subject to continuation of departmental proceedings. As the Block Development Officer started constructing a public toilet on the petitioner's land though the order of interim injunction was in force, the appellant/petitioner filed a Contempt Petition annoyed by which, he was once again suspended on 23.11.2005 without assigning any reason.

c. In W.P. No.39384 of 2005 filed by the appellant/petitioner, the suspension order was stayed and he was subsequently posted to another village. In W.P. No.19370 of 2006 filed by the appellant/petitioner on the ground that no charge memo was issued for the second suspension, this Court had directed the third respondent to dispose of the departmental enquiry on or before 31.10.2006. Further, the appellant/petitioner had filed yet another writ petition in W.P. No.45005 of 2006 to direct the third respondent to relieve him from the charges in which this Court had ordered to complete the enquiry and pass orders on the Charge Memo against the appellant/petitioner on or before 31.12.2006 after giving adequate opportunity to the appellant/petitioner to examine the witnesses, viz., the Tahsildar and the District Revenue Officer.

d. In reply to the show cause notice dated 08.12.2006 asking him to appear for an enquiry before the third respondent on 18.12.2006 which was based on the report of the Enquiry Officer, the appellant/petitioner had written that such Enquiry Report is not valid since the enquiry was conducted without examining witnesses, that too, without serving the Enquiry Report on him which was served only later along with another show cause notice dated 21.12.2006. No opportunity was provided to him to examine witnesses, despite the direction given by this Court to this effect and this being the position, he had received on 04.01.2007, the order dated 29.12.2006 removing him from service and hence, he had filed the writ petition which has been dismissed by the learned Single Judge as already stated in the beginning and hence, the present appeal.

3. Heard Mr. K. Shahul Hameed, learned counsel for the appellant/petitioner and Mr. G. Sankaran, learned Additional Government Pleader (Writs) for the respondents.

4. The main stand taken by the counsel for the appellant/petitioner is that though this Court had directed the respondents to give adequate opportunity to the appellant/petitioner to examine the witnesses, the enquiry conducted not complying with such direction of this Court and that too without furnishing him with a copy of the Enquiry Report, is not a valid one and on this ground itself, the writ petition ought to have been allowed by the learned Single Judge.

5. Rebutting the above, the Additional Government Pleader appearing for the respondents has contended that the learned Single has taken cognizance of this aspect and has categorically held that the appellant/petitioner was simply sending letters

instead of appearing in person for enquiry and that since the respondents were to dispose of the enquiry proceedings before the date stipulated by this Court, i.e. 31.12.2006, the impugned order came to be passed and these findings of the learned Single Judge do not call for any intervention. He has further contended that the appellant/petitioner should have first exhausted the statutory appeal remedy available to him under the rules challenging the order of removal from service passed by the third respondent herein, before rushing to this Court to file the writ petition.

6. We have perused the order under challenge before us as well as the order of removal of the appellant/petitioner which was impugned in the writ petition and also the relevant records.

7. It is seen that in the order of the learned Single Judge which is under challenge before us, the learned Single Judge has proceeded to deal with the matter based on the order of the disciplinary authority, namely, the third respondent herein. Now, the question before us is whether the learned Single Judge is correct in doing so when the appellant/petitioner has bye-passed the statutory appeal remedy available to him before the District Revenue Officer, the second respondent. Therefore, rather than going into the merits of the case, we proceed on this footing.

8. No doubt, the main grievance of the appellant/petitioner is that he ought to have been afforded an opportunity of hearing two witnesses, viz., the District Revenue Officer and the Tahsildar. In this regard, he had resorted to writing letters to the third respondent and it is seen from the records that these two witnesses have been asked to be present for the enquiry on 26.12.2006 and the appellant/petitioner too has been kept apprised of this vide second show cause notice dated 21.12.2006. But, the appellant/petitioner had not chosen to appear in person for the enquiry but had continued with a persisting demand, firstly, for the supply of the enquiry report for the purpose of facilitating him to defend his case and secondly, to examine two witnesses. The two aspects, viz., affording opportunity to the appellant/petitioner and the third respondent's conclusion ex-parte, are undoubtedly matters for adjudication by the second respondent, the District Revenue Officer who is the appellate authority. But, admittedly, the appellant/petitioner has not chosen to exhaust the appeal remedy to put forth his case. Had he taken the matter before the appellate authority, the latter would have certainly looked into these two aspects and in fact, there is every possibility, though not a certainty, that the appellate authority would have considered these aspects, taking cognizance of the direction of this Court in W.P. No.45005 of 2006 dated 22.11.2006, in and by which the Enquiry Officer has been directed to give adequate opportunity to the appellant/petitioner to

examine the witnesses required to be examined to prove his innocence. Further, it has also been made clear in this Court's direction that no further time would be given.

9. In that view of the matter, the stand taken by the appellant/petitioner in approaching this Court in haste without exhausting the statutory appeal remedy and insisting upon this Court to pass orders on merits in the writ petition, does not sound proper. In fact, there are a number of instances where the appellate authority, in matters involving departmental proceedings, had interfered with the order of the disciplinary authority and reduced the proportionality of the punishment and had also remitted the matter to the Enquiry Officer in the event of some irregularities found in the enquiry conducted by him or in case of non-application of mind by the disciplinary authority. Therefore, we are not in agreement with the approach of the appellant/petitioner in bye-passing the statutory appeal remedy available to him under the rules. No doubt, this appeal remedy can be bye-passed; but, it can be only in rarest of rare cases and this is not a fit case for the appellant/petitioner to bye-pass the effective and efficacious alternative statutory appeal remedy available to him. Thus, looking from any angle, this Court feels that this is a case in which the appeal remedy has to be first exhausted by the appellant/petitioner. In view of this finding of ours, we are of the considered opinion that the learned Single Judge ought to have directed the appellant/petitioner to exhaust his appeal remedy first. Instead, the learned Single Judge has proceeded to go into the merits of the case, which, in our opinion, is not proper. Therefore, without going into the merits of the case, we are setting aside that portion of the order of the learned Single Judge insofar as deciding the case by going into its merits. Accordingly, we direct the appellant/petitioner to move the appellate authority, viz., the second respondent for redressal of his grievance, within a period of four weeks from the date of receipt of a copy of this order.

10. In this context, it is made clear that the period of pendency of this writ petition before this Court need not be taken into account for the purpose of limitation while the appellant/petitioner proceeds to exhaust the statutory appeal remedy before the appellate authority. It is also made clear that the appellate authority should decide the case independently without being influenced by the order of the learned Single Judge in the writ petition which is impugned before us.

With the above directions, the writ appeal is allowed in part. No costs. Consequently, connected M.P. is closed.

cad

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1 The District Collector
Namakkal

2 The District Revenue Officer
Namakkal

3 The Revenue Divisional Officer
Namakkal

4 The Tahsildar
Rasipuram
Namakkal District

+ 1 cc to the Government Pleader, SR No.36027

+ 1 cc to Mr. K. Shahul Hameed, Advocate, SR No.36204

NG(CO)
SR/29.6.2007

judgment in
W.A. No.406 of 2007
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